



April 9, 1999

Ms. Elizabeth Lutton  
Senior Attorney  
City of Arlington  
501 West Main Street  
Arlington, Texas 76010

OR99-0969

Dear Ms. Lutton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123330.

The City of Arlington (the "city") received a request for information relating to a specific internal investigation. You contend that some of the requested information is excepted from public disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, you claim that certain marked portions of Exhibits 2 and 3 are protected from disclosure under common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The information you have marked pertains to the work behavior and performance of public employees and the conditions for their continued employment, and as such cannot be deemed to be outside the realm of public interest. Therefore, the city may not withhold the marked information under common-law. Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

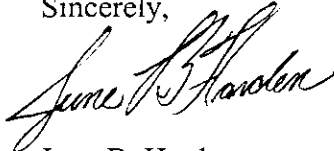
You also contend that portions of the information at issue are excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the

governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). You contend that the informer's privilege protects the identities of witnesses interviewed by the city. Public employees have a duty to report work-related violations of city policies. Consequently, public employees may not avail themselves of the informer's privilege in this type of work-related situation. See TEX. R. CRIM. EVID. 508(c).

Finally, you state that you are withholding the social security numbers contained in the submitted documents from disclosure pursuant to section 405, title 42 of the United States Code. We note that a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). You state that the city has a *policy* of keeping the social security numbers of its employees confidential. We do not believe that the city's policy can be considered a *provision of law* enacted on or after October 1, 1990. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (agency rule may not make information confidential in circumvention of Open Records Act). Consequently, the city may not withhold the submitted social security numbers under section 552.101 in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref:: ID# 123330

Enclosures: Submitted documents

cc: Ms. Sharlotta Connally  
205 Littlebrook Drive  
Joshua, Texas 76058  
(w/o enclosures)